

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HAYDEN,)	CASE NO. 1:17CV2635
)	
Plaintiff,)	SENIOR JUDGE
)	CHRISTOPHER A. BOYKO
vs.)	
)	<u>ORDER</u>
2K GAMES, INC., et al.,)	
)	
Defendants.)	

CHRISTOPHER A. BOYKO, SR. J.:

This matter comes before the Court upon Plaintiff's Motion (ECF DKT #121) to Exclude Take-Two's Third Party Declarants, or Alternatively, to Re-Open Discovery to Take Their Depositions and Defendants' Motion (ECF DKT #141) to Continue Trial. For the following reasons, the Court grants Plaintiff's alternative limited request to re-open discovery and grants Defendants' request for continuance of trial.

Plaintiff's Motion to Exclude

In his Motion, Plaintiff expresses surprise at seeing the Declarations of LeBron James, Tristan Thompson and Danny Green for the first time in support of Defendants' Motion for Summary Judgment. Plaintiff also argues that these individuals were never fully identified as

required by Fed.R.Civ.P. 26. The Rule directs parties to supply, to the extent possible, the phone numbers and addresses of persons having discoverable information.

Defendants respond that James, Thompson and Green were named in the Initial Disclosures provided on May 15, 2018; although there was an added proviso that “Take- Two is willing to meet-and-confer regarding contact information.” Defendants comment that the Declarants are not strangers to the case since James, Thompson and Green are identified in Plaintiff’s Complaint as Plaintiff’s clients and as the individuals bearing the tattoos specifically at issue in this Copyright Infringement lawsuit.

The Court finds that Plaintiff could have been more diligent and could have brought the issue of the lack of witnesses’ contact information to the Court’s attention much sooner. Moreover, at this stage of the proceedings — with dispositive motions pending and a trial date scheduled — the exclusion of declarants and potential trial witnesses is too draconian an action.

The Court reminds the parties that the purpose of a jury trial is a quest for the truth. In its discretion, balancing the equities and weighing the burdens facing both sides, the Court finds the wiser course is to permit Plaintiff the opportunity to depose the three NBA players, LeBron James, Tristan Thompson and Danny Green, on the subject matter of their Declarations. The parties shall confer about supplying the contact information for these three individuals and how to address concerns about shielding the information from public access.

Therefore, the Court grants Plaintiff’s Motion (ECF DKT #121) in part as to the alternative request. Discovery is re-opened for thirty days (until May 16, 2022) for the limited purpose of conducting depositions of the three Declarants. Plaintiff is granted until June 16,

2022, to supplement the Opposition to Defendants' Motion for Summary Judgment.

Defendants have until June 30, 2022 in which to supplement their Reply Brief, if necessary.

Defendants' Motion to Continue Trial

Currently, the captioned case is set for trial on June 20, 2022. Summary Judgment motions, multiple motions to exclude expert testimony and Plaintiff's motion to amend for a fifth time are pending. The Court finds that rulings on these motions could significantly impact the scope of this lawsuit. Based upon these considerations, Defendants move for a continuance of trial until decisions are issued on the pending matters. Plaintiff objects; but understands if the Court requires time to appropriately address all the issues and to make thoughtful rulings.

Keeping the parties' positions in mind, and based upon the Court's order re-opening discovery for a limited purpose, Defendants' Motion (ECF DKT #141) is granted and the current trial date and associated deadlines are vacated. On or before April 21, 2022, the parties shall submit a joint proposed schedule for motions in limine, trial briefs, deposition designations, final pre-trial and jury trial. The parties shall keep in mind that the Court will not consider trial dates beyond October of this year.

IT IS SO ORDERED.

DATE: April 14, 2022

s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
Senior United States District Judge